

## **REVIVAL OF THE MULTI-MEMBER, LLC AND BURIAL OF THE SINGLE MEMBER, LLC**

About a year ago, I wrote to let you know that the Florida Supreme Court dismantled the single member LLC in the *Olmstead* ruling. The court invalidated the statutory creditor protection of LLC interests if the entire LLC is held by one member. The ruling also cast doubt on the statutory protection of multi-member LLC interests. The court ignored the protective differences between corporations and LLC's by invalidating the "charging order" creditor protection of LLC equity. The charging order limits any creditor attempting to reach LLC interest to LLC distributions (if any) payable to the debtor/member. The ruling allows for the seizure of single-member LLC interests and potentially exposes all Florida LLCs.

The Florida legislature has addressed the *Olmstead* decision with a bill adding the necessary "exclusivity" language to the statute. Once signed by the governor, any creditor of a member will be limited "exclusively" to a charging order. The bill, however, allows the creditor to foreclose the membership interests held in a single member LLC. Foreclosure is conditioned on the creditor proving that LLC distributions (to the creditor) will not satisfy the judgment within a reasonable time. The bill provides no guidance as to the determination of "reasonable time" or what "multiple member" means. Although the new law will protect interests in Florida LLC's owned by more than one member, the courts must decide (i) the extent to which parties related to an LLC founder will be treated as a second member (to avoid single member status) and (ii) the distribution standard required to protect the single member Florida LLC.